

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1130 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASSOCIATED BUSSINESS CORP.

Versus

STATE OF GUJARAT

Appearance:

MR AB ACHARYA for Petitioner

Mr.K.M.Mehta, Asst.GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/07/97

ORAL JUDGEMENT

1. The present CRA is filed against the judgment and order of the executing court in Execution Petition No.120/90. It appears that the original plaintiff claimed amount of Rs.4,78,409.65ps and the J.Dr. has deposited the amount of Rs.3,74,839/- on 17.11.1990. The award was passed in Civil Misc.Application No.165/88.

2. The Execution Petition No.120/90 was filed in the Executing Court. the J.Dr.filed reply at Exh.17 and he contended that he has already deposited the amount as directed and declared by the Arbitrator as per the award in the civil court and that the arbitrator has not passed any award for withdrawal. The Judgment Creditor also accepted by filing application at Exh.15 that the amount of Rs.3,74,839/- was deposited and vide Exh.18 he also applied for withdrawing the said amount which request was granted on certain conditions like furnishing security. It is therefore undoubtedly true that the Judgment Creditor has withdrawn the principal amount which is awarded by the arbitrator and the question is one of the payment of interest.

3. During the pendency of application the Judgment Creditor moved application at Exh.22 that he will be awarded interest of Rs.83,951.80ps. which application was rejected by the executing court on merits, and against said order the Judgment Creditor has not initiated any further proceedings. Once the amount which is awarded by the Arbitrator is already deposited and the same is withdrawn by the Judgment Creditor on the terms and conditions stated by the court, the execution proceedings would naturally come to an end. It is subsequently that the Judgment Creditor claimed in the execution proceedings the amount of interest of Rs.83,921.80ps which application was also rejected by the executing court by order below Exh.21. It appears that though the Ld.Jt.Civil Judge (SD) at Baroda felt that the matter was required to be reheard and he decided to finally hear the matter and decide the point of interest, he referred to the original decree at Exh.2 and finally passed the order in Civil Misc.Application No.165/88. He found that in such an application it was clearly stated that the application was partly allowed and the interest was awarded at the rate of 15%p.a. from the date of reference till the filing of award in the court and therefore claim of interest ought not to have been disallowed. One fails to understand as to how the matter which has become final by finding of the court that the J.Dr.has already deposited the amount as directed by the Arbitrator and the Judgment Creditor has already withdrawn the amount, naturally the execution proceedings would come to an end and without any application whatsoever moved by any of the parties it is not known as to why the Jt.Civil Judge(SD) Baroda decided to hear the matter afresh and to hold that the Judgment Creditor was also entitled to the interest at the rate of 15%p.a. However, it appears that the same application was moved

in this court being Civil Misc.Application No.849/91 and the order passed by the Ld.Single Judge of this court has also observed that if the Judgment Creditor has not disputed interest amount, then the point shall have to be raised and miscellaneous application which is filed in this court was disposed of. The court therefore found that it was not possible for the civil court to award any interest and no interest was awarded by the Arbitrator and even the High Court has in miscellaneous application refused to award any interest. The court therefore came to conclusion that the Judgment Creditor was entitled to withdraw the amount of Rs.3,74,879/- and that he was not entitled to recover any interest and therefore by judgment and order dated 23rd July, 1992 he rejected the application in Special Execution Petition No.120/90.

4. In my opinion, the order passed by the court below i.e. the executing court is not assailable at all and in the absence of award of any interest it was not open to the executing court to award any interest from the date of reference till the date of filing of award. In that view of the matter this CRA has no substance and it is required to be dismissed and same is dismissed. Rule is discharged. No costs.

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